IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

C.M. No. 8187-C of 2006 and
R.S.A. No. 3329 of 2006

Date of Decision: 1.9.2006

Smt. Shanti d/o Smt. Phoosli wd/o Sheo Sahai

...Appellant.

Versus

Abhay Singh and others

...Respondent.

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.

PRESENT: Mr. Kul Bhushan Sharma, Advocate for the appellant.

AJAY KUMAR MITTAL, J.

C.M. No. 8187-C of 2006

This is an application under Section 151 of the Code of Civil Procedure for condonation of delay of 20 days in refiling the appeal.

For the reasons mentioned in the application, which is supported by an affidavit, the delay of 20 days in refiling the appeal is condoned. CM stands disposed of accordingly.

RSA No. 3329 of 2006

This regular second appeal filed by the plaintiff arises from a suit for declaration to the effect that the mutation of inheritance bearing No.250 dated 29.5.1968, mutation No. 408 dated 13.11.1980 entered in favour of the defendants and their father Ram Gopal are totally wrong, against law, illegal, and not binding on the right, title and interest of the plaintiff qua the suit land and are liable to be quashed and a consequential relief of permanent injunction restraining the defendants from alienating the

land in any manner and to interfere in the possession of the plaintiff.

The facts as narrated in the plaint are that one Sheo Sahai son of Chet Ram was the father of the plaintiff and he had two wives, namely, Smt. Phoosli and Smt. Dhani and the plaintiff was born from the wedlock of Sheo Sahai and Phoosli whereas one Ram Gopal father and predecessor-in-interest of the defendants was born from the loins of Sheo Sahai and Smt. Dhani. It was pleaded that after the death of Smt. Dhani and Sheo Sahai, mutation of his inheritance bearing No. 271 dated 30.3.1993 was sanctioned in favour of Smt. Phoosli, mother of the plaintiff and Ram Gopal and subsequently after the death of Smt. Phoosli, mutation of inheritance bearing No.250 was sanctioned on 29.5.1968 in favour of Ram Gopal father of the defendants which is alleged to be illegal, null and void. It was further pleaded that after the death of Ram Gopal, mutation of inheritance No.408 dated 13.11.1980 was also got sanctioned by the defendants in their names qua the disputed land. By way of present suit, the plaintiff had challenged the legality and validity of mutation No. 250 dated 29.5.1968 and mutation No. 408 dated 13.11.1980.

Upon notice, the defendants filed their joint written statement by raising various preliminary objections. It was pleaded that Sheo Sahai had only one wife, namely, Smt. Phoosli and Ram Gopal predecessor-in-interest of the defendants was born out of the said wedlock and no daughter by the name of Shanti was ever born. It was pleaded that the mutations of inheritance were rightly sanctioned. It was further pleaded that the defendants were the sole owners in possession of the suit land and have been in continuous possession for the last more than 30 years. The other averments made in the plaint were denied.

The trial court took issues No.1 to 5 and 9 to 11 together being inter related and after appreciating the evidence led by the parties came to

the conclusion that the plaintiff failed to prove that she was the daughter of Smt. Phoosli Devi and Sheo Sahai and that the defendants were owners in possession over the suit land as per their long standing entry in the revenue record. Accordingly, the suit filed by the plaintiff was dismissed vide judgment and decree dated 4.3.2002. On appeal, the lower appellate court affirmed the findings recorded by the trial court and dismissed the appeal vide judgment and decree dated 9.3.2006.

Learned counsel for the appellant has made efforts to reappreciate the findings recorded by the courts below. However, he could not pin point any error in the concurrent findings of fact recorded by the courts below which may call for interference by this Court in the regular second appeal. No question of law, much less a substantial question of law arises in this appeal.

In view of the above, finding no merit in this appeal, the same is hereby dismissed.

September 1, 2006 **(AJAY KUMAR MITTAL)**
gbs **JUDGE**